

25 PUBLIC WORKS

The State of Idaho, Department of Administration, Division of Public Works is responsible for all public works projects. Any questions should be directed to:

Division of Public Works
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25.1 Definition

Public Works is defined in *Idaho Code 67-5710B* as:

(2) "Public works" mean:

(a) Any new building, alteration, repair, demolition or improvement of any land, building, structure including utilities, or remodeling or renovation of existing buildings, or other physical facilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to health and safety of persons which are not covered by codes, or to affect a permanent improvement to the facility for any reason including aesthetics or appearance;

(b) Site improvement or developments, which constitute permanent improvements to real property;

(c) Purchase and installation of fixed equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities for the conduct of programs initially housed therein to include any equipment that is made a permanent fixture of the building; and

(d) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life cycle cost studies, energy analysis, and other studies associated with any new building, alteration, repair, demolition or improvement and to supervise the construction or execution of such projects.

25.2 Determining Public Works

Does your project fall under the Division of Public Works or can it be handled using Division of Purchasing Rules? The following information is presented to help you make the determination. Note the key words that can help make this determination.

Division of Public Works

Construction (build it)

- Buildings - new and renovated
- Improvements to real property such as parking lots, utilities, earthwork, landscaping
- Architect, Engineers and other consultants related to above
- Equipment and furnishings permanently attached to a building or facility electrical equipment direct wired such as commercial washing machine or dishwasher that has direct water or gas service connections

KEY WORDS

installed
connected
constructed

Division of Purchasing

Acquisition (buy or rent it)

- Procuring or purchasing goods, services, parts, supplies, and equipment
- Building equipment and furnishings not permanently attached to the building or facility, such as electrical equipment that plugs into an outlet residential washing machine connected by hoses
- Building materials and equipment to be supplied by Agency to Contractor or installed by Agency staff or inmates
- Consulting services other than relating to buildings and facilities

KEY WORDS

delivered
furnished
assembled

25.3 Administration of Construction Projects

Who administers the project, Public Works or the Agency? The following information can help you determine who is responsible for administering your project.

<u>Administered by DPW</u>	<u>Administered by Agency</u>
Projects funded by Permanent Building Fund	University of Idaho except where Permanent Building Funds are used
Projects over \$30,000 construction cost (see exceptions)	Projects under \$30,000 construction cost (may use informal bids)
Administrative Office Buildings and related facilities for:	Other than Administrative Office Buildings:
Idaho Transportation Dept.	highways and bridges, maintenance facilities, sand sheds
Idaho Dept. of Fish & Game	fish hatcheries, maintenance, facilities, stream improvements, game fences
Idaho Dept. of Parks & Recreation	park grounds improvements, visitor centers, restrooms, marina improvements
Idaho Dept. of Lands	roads, bridges, equipment and maintenance buildings
	The Division of Military has exemptions from DPW and usually do their own projects not funded by the Permanent Building Fund.
	North Idaho College and College of Southern Idaho are not considered state institutions and do their own projects unless they receive Permanent Building Funds.

State agencies using other than Permanent Building Funds for projects with a written cost estimate less than \$30,000 do not come under the administrative authority of the Division of Public Works and the Permanent Building Fund Advisory Council. An agency may request, and the Division of Public Works may accept the administration of such projects. If these projects are administered by the Division of Public Works, they are not required to be reported to the Permanent Building Fund Advisory Council.

25.4 Methods

Public works projects are governed by State Statutes. Different bidding limit thresholds apply as listed below. Smaller projects are delegated to agencies and the Division of Public Works handles larger projects. Bidders for public works projects do not have to be registered vendors by the Division of Purchasing to submit a bid, but are required to be properly licensed as Public Works Contractors.

25.4.1 Projects Costing less than \$2500

Projects with a written cost estimate of less than \$2,500 do not have specific requirements for their implementation. Common sense and good judgment should be used if such a project is to be accomplished.

25.4.2 Projects Costing more than \$2500 and less than \$30,000

Projects with a written cost estimate of more than \$2,500 and less than \$30,000 are accomplished using informal bidding. Bids must be solicited from a minimum of three (3) licensed public works contractors. For a detailed information and basic minimum requirements for informal bidding documents see *25.5 Requirements for Informal Bids and Letter Contract Documents* and *25.6 Sample Invitation for Informal Bids Document*.

Minimum requirements for informal bids include the following:

1. Adequate public notice given at least seven (7) days prior to bid opening. Such notice may be publication in a newspaper or trade journal in the work area or by notifying persons believed to be interested.
2. Informal bids must be submitted in writing.
3. Bid shall be in response to a prepared written document describing the projects scope of work.
4. Bids must be documented in the project file.

5. Bonding Requirements (over \$5,000) require performance and payment bonds not less than 85% of the bid amount.

25.4.3 Projects Costing more than \$30,000

Projects estimated to cost over \$30,000 are formally bid and administered by the Division of Public Works.

25.5 Requirements for Informal Bids and Letter Contract Documents

The extent of written documents including plans and specifications may vary depending on the complexity of the work. The intent of the informal process is to reduce the amount of documentation, and lengthy procedures inherent in the formal bidding and construction process. To be successful, the process should minimize the procedures but retain the appropriate safeguards to assure adequate performance. Basic minimal requirements for informal documents would include the following:

1. An invitation to bid, preferably published in a newspaper. Notifying interested bidders should always be done, but should be in addition to the invitation, rather than in lieu of it.
2. A prepared bid form, with blank spaces to fill in the amount of the bid, and for name and signature of bidder. If the project includes plumbing, heating or electrical work, the form should have the appropriate blank spaces.
3. Documents should state the requirement that all contractors and subcontractors are to be properly licensed at the time of bid.
4. Documents should indicate the minimum insurance requirements for the contractor. To avoid delays in commencement of the work, a certificate of insurance should be requested and submitted with the bid. If the low responsible bidder does not include the insurance certificate, no actual work should commence until such assurance of minimum coverage is verified.
5. All informal bids (unless less than \$5000) should require performance and payment bonds in the amount of 85% of the contract amount (Since 1999, DPW has required a full 100% of the bid amount on all projects over \$10,000). A particular form is not mandated. No payment on the project should be made until these bonds have been furnished.
6. An amount of time for completion of the work should be stated in the bidding documents and incorporated into the letter contract.

7. Plans and specifications should be sufficiently detailed to clearly define the extent and quality of the work and to allow inspection for confirming the performance. The required amount of detail will vary significantly with the complexity of the project. Reference standards would be adequate in many instances.
8. Code and safety issues should be considered. If appropriate, review and approval by the Division of Building Safety and the State Fire Marshal should be accomplished.
9. A public bid opening at a specific time and place is acceptable but not mandatory. Because of the informal nature, most irregularities in the bid can be waived. A documentation of the receipt of bids is to be placed in the project file. Retention of all bid documents is desirable.
10. Evaluation of bids and awarding of a letter contract should be accomplished promptly. The letter contract should include a date to proceed, a date to complete the work and the total contract amount or terms.
11. In most cases, only one total payment should be made after the final completion and acceptance of the work. If more than one payment is deemed necessary or desirable, the bidding documents and the letter contract should address the terms and conditions for partial payments. The documents should also allow the Owner to deduct an appropriate amount from the payment for unacceptable performance or failure to complete on the agreed time. Reasonable judgment should be used in deductions from payments. Specific liquidated damages typically will not be employed in informal bidding.
12. Changes to letter contracts should be in the form of an additional letter, clearly indicating the scope of the change and any adjustments in contract amount or time.
13. Careful evaluation and acceptance of the work should be accomplished prior to authorized payment. The person responsible for this task should be determined and documented prior to issuing the letter contract. In some cases, the designer may not be contracted to perform construction and acceptance service. In many cases, it will be available on an hourly rate basis.
14. Generally, informal bid contracts will not require the typical close-out documents or requirement for the designer or contractor to provide services after the final payment.

25.6 Sample Documents for Informal Bids

The following three pages are informal bid forms used by the Division of Public Works. They may be copied for agency use.

(agency letterhead)

REQUEST FOR INFORMAL BIDS

Informal bids will be received by the (agency name), State of Idaho,
at _____ until _____ local time, on _____
for Public Works Project No. _____
_____ .

Forms and other information are on file for examination at the following locations:

(Agency Name, Address)
Architect/Engineer Name, Address

Walk-thru information (if required):

A Public Works Contractors License for the State of Idaho is required to bid on
this work.

Estimated Cost: \$ _____

Name, Project Manager
Agency

(Date)

REQUEST FOR INFORMAL BIDS

PW Project No. _____

The State of Idaho, (agency name), will receive informal bids for the above project at (location) until (time) local time on (date).

The work shall include labor and materials required to construct (description) as shown on the attached drawings and specifications.

An on-site inspection may be scheduled with (contact person including address and phone #).

Informal bids shall be based on provisions of Section 44-1001 and 44-1002 of the Idaho Code dealing with labor preference.

The Contractor will be required to maintain Contractors Liability Insurance to include Workman's Compensation (statutory), Employers Liability (\$100,000 minimum) and Comprehensive General Liability (minimum of \$500,000 combined single limits for bodily injury and property Damage). Include a certificate of insurance with the informal bid.

The Contractor will be required to coordinate his work with (Agency person).

All work is to be accomplished within (# of days) calendar days from receipt of a Letter Contract and Notice to Proceed. Failure to perform the work within this established time period will be grounds for withholding an appropriate amount of the compensation as damages for the delay.

Contractors and Specialty Contractors must have a Public Works Contractors license as suitable for work to be accomplished on this contract.

The Contractor agrees to pay all state sales and use taxes.

A performance bond and labor and materials bond each in the amount of fifty percent (85% minimum or 100% recommended) of the contract amount will be required for work accomplished on this contract prior to payment of any compensation due.

Plans, specifications, proposal forms and other information are available at (list plan houses, etc.)

INFORMAL BID

DPW Project No. _____

The undersigned proposes to do the above work in accordance with the request for informal bids and all drawings and specifications attached thereto.

The Bidder agrees to commence work upon receipt of a Letter Contract and Notice to Proceed, and to complete the work within (# of days) calendar days thereafter. Bidder proposes to perform the work for _____ Dollars (\$_____).

Dated this _____ day of _____ 200_____.

Subcontractor:

Respectfully submitted,

By: _____

Plumbing

(Company Name)

Heating & Air Conditioning

(Business Address)

Electrical

(Signature)

(Provide spaces for the above three subcontractors only when needed).

(Title)

(Telephone Number)

(Fax Number)

(E-Mail)

25.7 State Statutes Pertaining to Public Works

Statutes pertaining to Public Works are found primarily in *Idaho Code 67-5710 - 67-5713*.

67-5710. PERMANENT BUILDING FUND ADVISORY COUNCIL -- APPROVAL OF USE OF FUND -- DUTIES OF ADMINISTRATOR OF PUBLIC WORKS.

There is hereby created in the division of public works a permanent building fund advisory council which shall be appointed by the governor. This council shall be composed of one (1) member of the senate, one (1) member of the house of representatives, a citizen engaged in the contracting business, a citizen engaged in the banking business, and a citizen who is a member of the business community not engaged in contracting or banking. The senate member and house of representative member shall be appointed for a fixed term of two (2) years. All other council members shall be appointed for a fixed term of three (3) years. The terms of office of members of the council holding office prior to July 1, 1996, shall expire on the following dates: contracting business member on July 1, 1996; senate member and house of representative member on December 1, 1996; business community member on July 1, 1997; and banking member on July 1, 1998. On or after July 1, 1996, the governor shall appoint members of the council as terms of existing members expire. All members of the council shall serve at the pleasure of the governor. The administrator of public works and the responsible heads of the agencies for which appropriations for construction, renovations, remodelings or repairs are made pursuant to chapter 11, title 57, Idaho Code, shall consult, confer and advise with the permanent building fund advisory council in connection with all decisions concerning the administration of these appropriations and the planning and construction or execution of work or works pursuant thereto. The approval of the permanent building fund advisory council shall be a condition precedent to the undertaking of planning or construction.

The administrator of public works is hereby directed to work in close cooperation with the responsible heads of institutions and agencies for which appropriations are made herein and no building proposals shall be approved by the administrator of public works nor any planning or work undertaken by that officer pursuant to these appropriations without the prior approval of the responsible chief officer of the institutions and agencies for whom appropriations are made herein.

67-5710A. REQUIREMENT OF PLANS AND SPECIFICATION APPROVAL BY PERMANENT BUILDING FUND ADVISORY COUNCIL AND DELEGATION OF PROJECT OVERSIGHT BY THE ADMINISTRATOR FOR THE DIVISION OF PUBLIC WORKS.

(1) (a) Unless an emergency exists as defined in section 67-5711B, Idaho Code, an existing public works may not be altered, repaired, constructed or improved

on property owned or occupied by any state institution, department, commission, board or agency, if the estimated cost of work exceeds the limit established in section 67-5711, Idaho Code, and except for those institutions and agency exemptions listed in section 67-5711, Idaho Code, without regard to source of funding, until the location, design, plans and specifications are approved by the permanent building fund advisory council and the project supervised by the division of public works or its designee.

(b) Facilities to be built with funds under the control of a nonstate entity, and owned or occupied by state entities, must have plans and specifications prepared, and all plans and specifications must be reviewed and approved by the permanent building fund advisory council prior to the advertising, bidding, construction and/or negotiation for construction of the facilities.

(2) (a) The administrator for the division of public works may delegate control over design, construction and all other aspects of a public works or maintenance project which costs less than one hundred fifty thousand dollars (\$150,000), to agencies of state government on a project-by-project basis, if a responsible party of the state agency requests that delegation in writing and the permanent building fund advisory council approves the delegation.

(i) The state agency to whom control is delegated shall assume all responsibility for project budgets and shall receive funds appropriated for the project upon application and approval by the permanent building fund advisory council.

(ii) Delegation of project control does not exempt the state agency from complying with public works statutes, life safety and building codes or other applicable codes and regulations. The state agency also must comply with any guidelines or procedures for design and construction adopted by the division of public works and the permanent building fund advisory council.

(iii) State agencies that receive delegated projects may not have access to permanent building fund advisory council contingency funds unless approved by the permanent building fund advisory council or authorized by appropriation.

(iv) Prior, written approval from the administrator must be granted for any public works utilizing sole source or limited competition. No agency will be delegated the ability to declare an emergency as defined in section 67-5711B, Idaho Code.

(v) The permanent building fund advisory council may elect to audit any project for compliance with applicable codes and policies.

(vi) The delegated state agency will use standard documents for professional services contracts and for construction contracts as adopted by the division of public works.

(vii) Delegation is subject to cancellation by the administrator for the division of public works with the concurrence of the permanent building fund advisory council.

67-5710B. DEFINITIONS.

As used in this chapter:

(1) "Preventive maintenance" means:

(a) Corrective repairs or replacements used for existing state-owned, or state operated facilities, which result from a systematic program in which wear, tear, and change are anticipated and continuous corrective actions are required to be taken to ensure peak efficiency and to minimize deterioration. It includes systematic inspection, adjustment, lubrication, replacement of components, as well as performance testing and analysis; and

(b) Repairs and replacements with an estimated useful life of less than five (5) years; and

(c) Repairs and replacements which are funded in the state agency's operating budget; and

(d) Repairs and replacements which can be accomplished by the agency's existing physical plant staff; and

(e) Repairs and replacements which do not require the services of architects, engineers, and other professionally licensed consultants to investigate conditions, prepare recommendations for corrective action, prepare plans and specifications, and supervise the execution of corrective projects.

(2) "Public works" mean:

(a) Any new building, alteration, repair, demolition or improvement of any land, building, structure including utilities, or remodeling or renovation of existing buildings, or other physical facilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to health and safety of persons which are not covered by codes, or to effect a permanent improvement to the facility for any reason including aesthetics or appearance;

(b) Site improvement or developments which constitute permanent improvements to real property;

(c) Purchase and installation of fixed equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities for the

conduct of programs initially housed therein to include any equipment that is made a permanent fixture of the building; and

(d) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life cycle cost studies, energy analysis, and other studies associated with any new building, alteration, repair, demolition or improvement and to supervise the construction or execution of such projects.

67-5711. CONSTRUCTION, ALTERATION, EQUIPPING, FURNISHING AND REPAIR OF PUBLIC BUILDINGS AND WORKS.

The director of the department of administration, or his designee, of the state of Idaho, is authorized and empowered, subject to the approval of the permanent building fund advisory council, to provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision of the construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance of any and all buildings, improvements of public works of the state of Idaho, the cost of which construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance exceeds the sum of thirty thousand dollars (\$30,000) for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses, provided, that the director or his designee, and permanent building fund advisory council shall, in the letting of contracts under this section, comply with the procedure for the calling of bids provided in section 67-5711C, Idaho Code; provided, however, that this section shall not apply to the construction, alteration, equipping or furnishing or repair or maintenance other than preventive maintenance of public buildings under the jurisdiction and control of the board of regents of the University of Idaho; provided further, that public works for the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands, except for administrative office buildings and all associated improvements, are exempt from the provisions of this section that relate to the administration and review of such projects by the director of the department of administration or his designee and by the permanent building fund advisory council. This exemption shall not relieve the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands in the letting of contracts for public works, from complying with the procedures of section 67-5711C, Idaho Code, related to the advertising and bidding for contracts. The permanent building fund advisory council may adopt rules consistent with existing law including rules for a program of inspection and maintenance, to carry out the provisions of this act.

67-5711A. DESIGN-BUILD CONTRACTING AUTHORIZED.

Notwithstanding any other provisions of law to the contrary, the director of the department of administration, or his designee, is authorized and empowered, subject to the approval of the permanent building fund council, to employ the use of the design-build method of construction in the letting of any and all contracts

for the construction, alteration, equipping, furnishing and repair of any and all buildings, improvements, or other public works of the state of Idaho. For the purposes of this section, a design-build contract is a contract between the state of Idaho and a nongovernmental party in which the nongovernmental party contracting with the state of Idaho agrees to both design and build the structure, roadway, or other items specified in the contract.

67-5711B. EMERGENCY CONTRACTING AUTHORIZED DIVISION OF PUBLIC WORKS.

The director of the department of administration, the administrator of the division of public works, or a designee of either official may make or authorize others to make emergency public works contracts when there exists a threat to public health, welfare, or safety under emergency conditions; provided that such emergency public works contracts shall be made with such competition as is practicable under the circumstances. The administrator may declare an emergency when one (1) or more of the following conditions exist: an imminent life-threatening environment; or an imminent threat to property; or an imminent loss of significant state resources. The administrator may also waive the requirements of section 67-2309, Idaho Code, regarding written plans and specifications. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

67-5711C. CONSTRUCTION OF PUBLIC PROJECTS -- COMPETITIVE SEALED BIDDING.

(1) All construction contracts for public works shall be awarded to the lowest responsible and responsive bidder after receipt of competitive sealed bidding except as otherwise provided in sections 67-5713 and 67-5711B, Idaho Code.

(2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public works.

(3) Adequate public notice of the invitation for bids shall be given at least fourteen (14) days prior to the date set forth therein for the opening of bids. Such notice shall include publication at least fourteen (14) days prior to bid opening in a newspaper of general circulation in the area where the work is located.

(4) Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record and the record shall be open to public inspection. After the time of the award all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(5) With respect to a project having a written cost estimate of greater than two thousand five hundred dollars (\$2,500) but less than the public works limit

established in section 67-5711, Idaho Code, the agency, if it does not perform the work with existing physical plant staff, must award a written contract to the lowest responsible and responsive bidder after soliciting at least three (3) documented informal bids from contractors licensed in Idaho to perform public works contracts, if reasonably available. Adequate public notice of the invitation for informal bids shall be given at least seven (7) days prior to the date set forth therein for the receipt of the informal bids. Such notice may include publication at least seven (7) days prior to bid opening in a newspaper of general circulation in the area where the work is located; or the agency may advertise the invitation for bids in appropriate trade journals, and otherwise notify persons believed to be interested in the award of a contract. Informal bids must be submitted by the contractor in writing in response to a prepared written document describing the project's scope of work in sufficient detail so as to enable a contractor familiar with such work to prepare a responsible bid. Nothing herein exempts an agency from the responsibility of utilizing formal plans and specifications if the work involves the public health or safety as described in chapters 3 and 12, title 54, Idaho Code. The agency must document receipt of the informal bids in the project file.

(6) Any personal property including goods, parts, supplies and equipment which is to be supplied or provided by a state agency for use in any public work, project, or preventive maintenance programs, whether the public work, project, or preventive maintenance program is constructed, undertaken or performed by agency in-house personnel, or by delegation pursuant to section 67-5710A, Idaho Code, or otherwise provided or supplied by the agency to a contractor, the personal property, goods, parts, supplies or equipment supplied or provided by the agency must be purchased or procured by the agency through the division of purchasing in accordance with the Idaho Code.

67-5711D. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(1) Definitions. As used in this section:

(a) "Cost-savings measure" means any facility improvement, repair or alteration, or any equipment, fixture or furnishing to be added or used in any facility that is designed to reduce energy consumption and energy operating costs or increase the energy efficiency of facilities for their appointed functions that are cost effective. "Cost-savings measure" includes, but is not limited to, one (1) or more of the following:

(i) Procurement of low-cost energy supplies of all types, including electricity, natural gas and water;

(ii) Insulating the building structure or systems in the building;

(iii) Storm windows or doors, caulking or weather stripping, multiglazed windows or door systems, heat-absorbing or heat-reflective glazed and coated window

and door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(iv) Automated or computerized energy control systems;

(v) Heating, ventilation or air conditioning system modifications or replacements;

(vi) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system;

(vii) Energy recovery systems;

(viii) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(ix) Installing new or modifying existing day lighting systems;

(x) Installing or modifying renewable energy and alternate energy technologies;

(xi) Building operation programs that reduce energy costs including, but not limited to, computerized programs, training and other similar activities;

(xii) Steam trap improvement programs that reduce energy costs;

(xiii) Devices that reduce water consumption; and

(xiv) Any additional building infrastructure improvements that produce energy cost savings, significantly reduce energy consumption or increase the energy efficiency of the facilities for their appointed functions and are in compliance with all applicable state building codes.

(b) "Director" means the director of the department of administration or the director's designee.

(c) "Energy cost savings" means any expenses that are eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service company or a qualified provider, but does not include merely shifting personnel costs or similar short-term cost savings.

(d) "Financial grade energy audit" means a comprehensive building energy systems audit performed by a professional engineer licensed in the state of Idaho for the purpose of identifying and documenting feasible energy and resource conservation measures and cost-savings factors.

(e) "Performance contract" means a contract between the director and a qualified provider or a qualified energy service company for evaluation, recommendation and implementation of one (1) or more cost-savings measures. A performance contract may be structured as either:

(i) A guaranteed energy savings performance contract, which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented. Guaranteed annual savings must meet or exceed the total annual contract payments made by the director or the user agency for such contract, including financing charges to be incurred over the life of the contract; or

(ii) A shared savings contract, which shall include provisions mutually agreed upon by the director and the qualified provider or qualified energy service company as to the rate of payments based upon energy cost savings and a stipulated maximum energy consumption level over the life of the contract;

(f) "Person" means an individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entity as recognized by the state of Idaho.

(g) "Qualified energy service company" means a person with a record of established projects or with demonstrated technical, operational, financial and managerial capabilities to implement performance contracts and who currently holds an Idaho public works contractor license.

(h) "Qualified provider" means a person who is experienced in the design, implementation and installation of energy efficiency and facility improvement measures, who has the ability to secure necessary financial measures to support energy savings guarantees and the technical capabilities to ensure such measures generate energy cost savings, and who currently holds an Idaho public works contractor license.

(2) Performance contracts. The director of the department of administration, subject to the approval of the permanent building fund advisory council, may enter into a performance contract with a qualified provider or qualified energy service company to reduce energy consumption or energy operating costs. Cost-savings measures implemented under such contracts shall comply with all applicable state building codes.

(3) Requests for qualifications. The director of the department of administration shall request qualifications from qualified providers and qualified energy service companies inviting them to submit information describing their capabilities in the areas of:

- (a) Design, engineering, installation, maintenance and repairs associated with performance contracts;
- (b) Experience in conversions to a different energy or fuel source, so long as it is associated with a comprehensive energy efficiency retrofit;
- (c) Postinstallation project monitoring, data collection and reporting of savings;
- (d) Overall project experience and qualifications;
- (e) Management capability;
- (f) Ability to assess the availability of long-term financing;
- (g) Experience with projects of similar size and scope; and
- (h) Other factors determined by the director to be relevant and appropriate relating to the ability of the qualified provider or qualified energy service company to perform the project.

(4) Notice. Adequate public notice of the request for qualifications shall be given at least fourteen (14) days prior to the date set forth therein for the opening of the responses to the request for qualifications. Such notice may be provided electronically or by publication in a newspaper of general circulation in the area where the work is located.

(5) Public inspection. All records of the department or an agency relating to the award of a performance contract shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(6) Award of performance contract.

(a) The director shall select up to three (3) qualified providers or qualified energy service companies who have responded to the request for qualifications. Factors to be considered in selecting the successful qualified provider or qualified energy service company shall include, but not be limited to:

- (i) Fee structure;
- (ii) Contract terms;
- (iii) Comprehensiveness of the proposal and cost-savings measures;
- (iv) Experience of the qualified provider or qualified energy service company;

(v) Quality of the technical approach of the qualified provider or qualified energy service company; and

(vi) Overall benefits to the state.

(b) Notwithstanding the provisions of section 67-5711C, Idaho Code, the director may, following the request for qualifications and the expiration of the specified notice period, award the performance contract to the qualified provider or qualified energy service company which best meets the needs of the project and whose proposal may or may not represent the lowest cost among the proposals submitted pursuant to this section.

(c) Upon award of the performance contract, the successful qualified provider or qualified energy service company shall prepare a financial grade energy audit which, upon acceptance by the director, shall become a part of the final performance contract.

(7) Installment payment and lease-purchase agreements. Pursuant to this section, the director may enter into a performance contract, payments for which shall be made by the user agency. Such performance contracts may be financed as installment payment contracts or lease-purchase agreements for the purchase and installation of cost-savings measures. Financing implemented through another person other than the qualified provider or qualified energy service company is authorized.

(8) Terms of performance contract.

(a) Each performance contract shall provide that all payments between parties, except obligations upon termination of the contract before its expiration, shall be made over time and that the objective of such performance contract is the implementation of cost-savings measures and energy cost savings.

(b) A performance contract, and payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective, subject to appropriation by the legislature, for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed twenty-five (25) years. The permissible length of the contract may also reflect the useful life of the cost-savings measures.

(c) Performance contracts may provide for payments over a period of time not to exceed deadlines specified in the performance contract from the date of the final installation of the cost-savings measures.

(d) Performance contracts entered pursuant to this section may be amended or modified, upon agreement by the director and the qualified provider or qualified energy service company, on an annual basis.

(9) Monitoring and reports. During the term of each performance contract, the qualified provider or qualified energy service company shall monitor the reductions in energy consumption and cost savings attributable to the cost-savings measures installed pursuant to the performance contract and shall annually prepare and provide a report to the director documenting the performance of the cost-savings measures.

67-5712. PROJECTION OF BUILDING REQUIREMENTS REPORT.

The permanent building fund council and the director of the department of administration works shall on or before September 1 next preceding each regular session of the legislature prepare and submit to the governor a projection of building requirements of all institutions and agencies of Idaho. Such projection shall include new buildings, maintenance and repair of existing state owned buildings.

67-5713. CONSTRUCTION AND ALTERATION OF STATE CORRECTIONAL FACILITIES.

The administrator of the division of public works is authorized and empowered, subject to the approval of the permanent building fund advisory council, to use appropriated funds or other fund sources to construct or alter, either in whole or in part, state owned correctional facilities by inmate labor for the purpose of providing meaningful work and rehabilitation programs for inmates confined therein, or to have such construction accomplished by the competitive bid process as authorized by section 67-5711, Idaho Code, whichever the permanent building fund advisory council deems most appropriate. Further providing that no construction or alteration by inmate labor shall be authorized, unless plans and specifications for such construction have been accomplished by a licensed architect or engineer appointed at the direction of the council, and such final plans and specifications approved by the council. Further providing that such construction or alteration shall be performed under the direct charge and supervision of the administrator of the division of public works.